

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
T.H., Appellant)	
)	
and)	Docket No. 22-1069
)	Issued: April 5, 2023
U.S. POSTAL SERVICE, DOMINICK V.)	
DANIELS PROCESSING & DISTRIBUTION)	
CENTER, Kearney, NJ, Employer)	
_____)	

Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 13, 2022 appellant, through counsel, filed a timely appeal from a January 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder rotator cuff tear causally related to the accepted May 27, 2021 employment incident.

FACTUAL HISTORY

On June 5, 2021 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on May 27, 2021 she sustained a left shoulder rotator cuff tear when she lifted trays and pushed full postal containers while in the performance of duty. She noted that there was a heavy volume of mail and that she worked alone. Appellant stopped work on May 27, 2021.

In a letter dated June 2, 2021, the employing establishment controverted appellant's claim alleging that she did not report it on the date of injury and that she was properly trained to perform her job safely.

In a June 3, 2021 work status note, Dr. Jason Garcia, a Board-certified orthopedic surgeon, treated appellant that date and recommended that appellant remain out of work until her next appointment.

A June 29, 2021 left shoulder magnetic resonance imaging (MRI) scan demonstrated moderate hypertrophy acromioclavicular (AC) joint with moderate enthesophyte extending from the inferior acromion, mild supraspinatus tendinosis, and chronic superior posterior labral tear.

In a July 7, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In a July 15, 2021 report, Dr. Garcia indicated that appellant was seen for follow-up of left shoulder pain and review of diagnostic tests. He diagnosed left shoulder joint pain, left shoulder tendinitis, history of repair of musculotendinitis of the shoulder cuff, glenoid labrum tear, and partial thickness rotator cuff tear. Dr. Garcia recommended left shoulder arthroscopic surgery. He reported that appellant worked as a mail handler and did a lot of heavy lifting. Dr. Garcia recommended that appellant remain out of work for approximately three to six months.

In a July 19, 2021 response, appellant described that on May 27, 2021 she worked on the high speed tray sorter from 12 to 3 p.m. She noted that the lane that she worked continuously ran at a repetitive rate with a high volume of mail. Appellant clarified that she was "claiming a traumatic injury over the course of a shift."

In a prescription note dated August 2, 2021, Dr. Anthony L. Parks, Jr., a Board-certified orthopedic surgeon, recommended that appellant remain out of work.

By decision dated August 16, 2021, OWCP denied appellant's claim. It accepted that the May 27, 2021 incident occurred as alleged and that a medical condition had been diagnosed,

however, it denied her claim finding that she had failed to establish that her medical condition was causally related to the accepted employment incident.

On August 24, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 29, 2021.

In a November 12, 2021 report, Dr. David N. Feldman, a Board-certified orthopedic surgeon, indicated that appellant was evaluated for left shoulder pain and stiffness. He reviewed appellant's statement describing the May 27, 2021 employment incident. On examination of appellant's left shoulder, Dr. Feldman observed warmth, swelling, and AC joint tenderness. Range of motion testing was decreased with pain. Dr. Feldman reported that cross arm sign, labral sign, impingement sign, and Yergason's sign were positive. He indicated that a June 29, 2021 MRI scan demonstrated moderate hypertrophy AC joint with moderate enthesophyte extending from the inferior acromion, mild supraspinatus tendinosis, and chronic superior posterior labral tear. Dr. Feldman diagnosed left shoulder pain and swelling, left shoulder bursitis, left shoulder adhesive capsulitis, superior labrum anterior-to-posterior (SLAP) tear of the left shoulder, incomplete tear of left rotator cuff, and cervical radiculopathy. He opined that appellant was status-post on-the-job injury on May 27, 2021 with resultant left shoulder pain and stiffness that has not improved with conservative care.

On November 19, 2021 Dr. Feldman performed left shoulder arthroscopic surgery on appellant. The operative report noted diagnoses of left shoulder impingement, bursitis, AC joint dysfunction, adhesive capsulitis, partial rotator cuff tear, labral tear, and arthritis. Appellant also submitted various hospital records dated November 19, 2021.

In a December 8, 2021 report, Dr. Feldman noted that appellant was evaluated for follow-up of left shoulder status-post shoulder arthroscopy. On examination of the left shoulder, he observed that all portals were healing well without redness or sign of problem. Dr. Feldman indicated that appellant worked at the employing establishment on a machine that went very fast and required her to repetitively lift mail and package trays above shoulder height. He opined that appellant had a "specific injury that started in 2012 that was exacerbated by her continued work." Dr. Feldman further explained that appellant had an injury that caused a Bankart lesion that involved the labrum and capsule to be torn from the glenoid, which was repaired during her arthroscopy. He noted that appellant's partial rotator cuff tears were caused by repetitive rubbing of an arthritic spur of the AC joint every time she brought her arm up. Dr. Feldman diagnosed status-post arthroscopy of the left shoulder.

By decision dated January 28, 2022, OWCP's hearing representative affirmed the August 16, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

³ *Id.*

limitation of FECA,⁴ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁷ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸

To establish causal relationship between the condition and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

In reports dated November 12 and December 8, 2021, Dr. Feldman reviewed appellant's statement describing the May 27, 2021 employment incident. He provided examination findings and diagnosed left shoulder pain and swelling, bursitis, adhesive capsulitis, SLAP tear, incomplete tear of left rotator cuff, and cervical radiculopathy. Dr. Feldman opined that appellant was status-post on-the-job injury on May 27, 2021 with resultant left shoulder pain and stiffness that has not improved with conservative care. He indicated that appellant worked at the postal service on a

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

machine that went very fast and required her to repetitively lift mail and package trays above shoulder height. Dr. Feldman opined that appellant had a specific injury that started in 2012 that was exacerbated by her continued work. He explained that appellant had an injury that caused a lesion that involved the labrum and capsule to be torn from the glenoid. Dr. Feldman reported that appellant's partial rotator cuff tears were caused by repetitive rubbing of an arthritic spur of the AC joint every time she brought her arm up.

The Board finds that, while the reports from Dr. Feldman were not fully rationalized, it did provide a physiologic medical explanation indicating that appellant sustained tears in her left shoulder on May 27, 2021 while at work. Although the reports are insufficient to meet appellant's burden of proof to establish the claim, it raises an uncontroverted inference between appellant's medical conditions and the May 27, 2021 incident and, thus, it is sufficient to require OWCP to further develop the medical evidence.¹¹

It is well established that, proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.¹² It has the obligation to see that justice is done.¹³

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, along with the case record and a statement of accepted facts, to a specialist in the appropriate field of medicine, for a reasoned opinion regarding whether she sustained a left shoulder condition causally related to the accepted May 27, 2021 employment incident. If the physician opines that appellant does not have a diagnosed condition or conditions causally related to the accepted employment incident, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Feldman. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹¹ *K.S.*, Docket No. 22-0210 (issued July 29, 2022); *M.R.*, Docket No. 20-0101 (issued September 14, 2021); *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

¹² *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

¹³ *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 5, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board